IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SALES TAX REFERENCE No. 2 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONEROFSALESTAX - Applicant(s)

Versus

DINESHSYNTEXPVT.LTD. - Respondent(s)

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Appearance :
MR SIRAJ GORI, AGP for Applicant : 1
None present for the Opponent though served
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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 05/10/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Present is a Reference under Section 69 of the Gujarat Sales Tax Act, 1969. The matter has been referred

to the High Court along with Statement of Case for determination of the following question:-

> “Whether on the facts and in the circumstances of the case, Gujarat Sales Tax Tribunal was justified in law in holding that there is no breach of recitals of declarations in Form I on the part of the opponent and so no purchase tax was payable under section 50 of the Gujarat Sales Tax Act, 1969 by the opponent in respect of the purchase of yarn effected by him against Form I, vide bill No. A/Derby/2; dated 7.2.84.”

Certain documents have also been annexed with the statement of the case.

2. The facts necessary for proper disposal of the Reference are as under:-

The Assessee, appellant before the Tribunal, M/s. Dinesh Syntex Pvt. Ltd., is a dealer registered under the Gujarat Sales Tax Act, 1969 [in short, “the Act”], they are processors of fabrics on their own account as well as on behalf of customers on job work basis. They were

holding exemption certificates as new industry under entry 118 of the government notification issued under Section 49(2) of the Act, in respect of their said industry at Dholka. On 18.6.'86, the said assessee made an application to the learned Deputy Commissioner of Sales Tax under Section 62 of the Act for determination of the question, namely; “Whether on the facts of our case, any purchase tax is payable under section 50 of the Gujarat Sales Tax Act, 1969, in respect of the purchases of yarn against Form-I under entry 118(2) as is specified in the purchase bill no. A/Derby/2 dated 7.2.1984.” Along with the question above-referred, yet another question was posed, but at the time of the argument, the said question was not pressed, therefore, the Commissioner, so also the Tribunal did not refer to that question. It is to be seen that the assessee along with his application filed under Section 62 of the Act submitted certain documents including delivery challan and bills etc., to show that they had purchased certain goods, they have delivered certain goods to another person for manufacturing the fabric on their behalf and the bills relating to the amount of the job work.

3. In the application seeking determination of the

question, it was submitted that the yarn was purchased on submission of Form I and the yarn was used in manufacture of grey fabric in another factory at Dholka or Ahmedabad. Grey fabric so manufactured was brought back to the assessee's factory at Dholka where it was further processed by using dyes and chemicals purchased against Form-I and the finished goods were thereafter sold by the appellant in accordance with exemption certificate. The assessee also submitted that the appellant had used the goods purchased against the Form-I and the finished goods were thereafter sold by the appellant in accordance with the exemption certificate. The assessee also submitted that the appellant had used the goods purchased against Form-I in the manufacture of finished goods for sale by him and as such, he did not contravene any of the recitals of the certificate in Form-I issued by him under the entry 118(2) of the government notification and therefore there was no liability. The learned Deputy Commissioner held that since the raw material purchased against the Form-I was not utilized by the assessee in his own factory personally and the goods in their grey form were not even manufactured in the designated areas, there being breach of the recitals/conditions of certificate in Form-I,

provisions of Section 50 would be attracted.

4. Being aggrieved by the said determination, the assessee preferred an appeal under Section-65 of the Act before the Gujarat Sales Tax Tribunal. After hearing both the sides and on going through the provisions of the exemption scheme, learned Tribunal observed that as the exemption notification or the form were not restricting the use of the purchased articles in the factory premises of the assessee, the Deputy Commissioner was not justified in observing that Section 50 would be attracted. In para-11, it further observed that in view of the ratio of the decision of the Allahabad High Court, reported in 15 S.T.C., 46, it was to be held that the appellant himself had manufactured the goods. It also observed that as there were no words limiting the activity of the appellant holding certificate under entry 118(2) of the government notification issued under Section 49(2) of the Act that the entire activity or process of converting raw material into finished goods should be carried out only in the designated area and if part of the activity is carried out outside the designated area, they will not be entitled to the benefit of the said entry. It also observed that in the

absence of any such specific condition, the learned Deputy Commissioner was unjustified in holding that Section 50 could be applied.

5. The State Government being aggrieved by the final outcome of the appeal, made an application to the Tribunal for making Reference along with the statement of case to the High Court under Section 69 of the Act. The Tribunal has referred the statement of case along with the question referred to above.

6. Mr. Gori, learned Assistant Government Pleader submits that the Tribunal was unjustified in holding that Section 50 would not be applicable and was also unjustified in not properly appreciating the aims and objects behind the exemption notification and also erred in not appreciating the condition no.7 of entry 118(2). His further submission is that if the exemption notification provided that the goods are to be used for manufacture, then, one must understand that the goods are to be used for manufacture within the factory premises of the person, who sought exemption. According to him, the moment, raw material travelled outside the factory premises of the exemptee for purposes of manufacturing

process etc., and are brought back to the factory after it had undergone some manufacturing process, there would be violation of exemption notification and such person would be answerable to tax under Section 50 of the Act.

7. We have heard Mr.Gori at length.

8. Section 49 of the Act relates to exemptions. It authorizes the State Government, subject to conditions or exemptions, if any, specified in relation to them, all classes of sales or purchases (as detailed in Section 49), shall be exempt from the payment of the whole of tax payable under the provisions of the Act. Section 49(2) of the Act says that subject to such conditions as it may impose, the State government may, if it considers it necessary so to do in the public interest, by notification in the ***Official Gazette*** exempt any specified class of sales or of purchases from payment of the whole or any part of the tax payable under the provisions of the Act. Entry 118(2) which is material for the present dispute reads as under:-

Entry 118(2):-

[2] Sales of raw materials, processing materials, consumable stores or packing materials by a registered dealer to a specified manufacturer.		Whole of tax	[1] If the specified manufacturer has, within 180 days from the date of this notifications or commissioning the new Industry applied for an eligibility certificate to the Industries Commissioner, Gujarat State for large and medium scale industry and to the General Manager of the District Industries Centre concerned for small scale industry along with.
			[i] an option in writing for exemption under this entry instead of entry 94 of the Notification and also;
			[ii] an option in writing for exemption under this entry instead of the benefit admissible under the scheme of Sales Tax Department as specified in Clause (B) of para 6 of the Government Resolution. An option exercised in this behalf shall be final and shall not be subject to any change.
			[2] If the specified manufacturer has obtained an eligibility certificate from the Industries Commissioner or as the case may be, General Manager of the District Industries Centre concerned stating inter alia that the new Industry has been commissioned on the date specified therein being any date during the period commending of the 1st June, 1980 and ending on the 31st March, 1986 in any of the designated areas.

			[3] If the specified manufacturer has actually used the goods within the State of Gujarat as raw materials, processing materials or consumable stores in the manufacture of any goods for sale by him which shall not take place outside the State of Gujarat or as packing materials in the packing of the goods so manufactured.
			[4] If the specified manufacturer furnishes to the selling dealer a certificate in Form I appended hereto declaring inter alia that the goods are required for use by him within the State of Gujarat as raw materials, processing materials or consumable stores in the manufacture of goods for sale which shall not take place outside the State of Gujarat or as packing materials in the packing of the goods so manufactured.
			[5] If the manufacturer contravenes any of these conditions or any of the provision of the Act or the Rules made thereunder, the exemption certificate issued to him by the Commissioner of Sales Tax, Gujarat State, under this entry shall be liable to be cancelled and on such cancellation the sales by a registered dealer to the specified manufacturer shall cease to be exempt under this sub-entry.
			[6] The specified manufacturer shall not be entitled to claim exemption under rule 30 of the Gujarat Sales Tax Rules 1970 from furnishing declarations or returns so long as the sales by a registered dealer to the specified manufacturer are exempt under this sub-entry.

			[7] The specified manufacturer having additional place or places of business within the jurisdiction of the same Sales Tax Officer or of Sales Tax Officers shall not be entitled to obtain the permission to furnish consolidated declaration or return and he shall be liable to furnish a separate declaration or return for each place to the concerned Sales Tax Officer and to maintain specified and separate details about the purchases production and sales affected at the respective places of business.

9. Condition no.4 of Entry 118(2) says that if the specified manufacturer furnishes to the selling dealer a certificate in Form I appended to the notification declaring inter alia that the goods are required for use by him **within the State of Gujarat** as raw materials, processing materials or consumable stores in the manufacture of goods for sale which shall not take place outside the State of Gujarat or as packing materials in the packing of the goods so manufactured.

10. In the present matter, undisputed case is that certain goods were purchased on submission of Form-I. Form-I is as under:-

“FORM – I

Certificate by a specified manufacturer purchasing goods for use in manufacture of goods.

[See entry at serial No. 118 inserted by Government Notification, Finance Department No. (CHN-11) GST-1081/ (S.49)(79)-TH, dated 5th February, 1981 issued under sec. 49(2) of the Gujarat Sales Tax Act, 1969.

I,_____ of Messrs _____ address at _____ do certify that I/the said @ _____ am / is a registered dealer holding a certificate of registration No._____ dated ____ and also holding a Certificate No._____ dated _____ granted by the Commissioner of Sales Tax, Gujarat State under Government Notification No. (GHN-11) GST-1081/(S.49)(70)-TH, dated the 5th February, 1981 and that the goods being raw materials, processing materials, or consumable stores mentioned in bills/cash memo @ invoice No._____ dated _____ of Messrs _____ will be issued by me/the said @ _____ within the State of Gujarat in the manufacture of goods for sale which shall not take place outside the State of Gujarat or being the packing materials mentioned in bill/cash/memo/invoice No. _____ dated _____ of M/s _____ will be used in the packing of the goods so manufactured, namely:-

I further certify that the aforesaid certificate was in force on the date of the aforesaid purchase of goods.

Place: Signature:

Date: Status “

11. According to Mr. Gori, when the raw material, processing material or consumable stores are sold by registered dealer to the specified manufacture for purposes of manufacturing activities within the premises of such purchaser only then, such person would be exempted from the purchase tax. His submission is that as the goods travelled beyond the factory premises and even the designated area, the exemption clause would not be applicable.

12. Condition no.7 on which much reliance has been placed reads as under:-

> “[7] The specified manufacturer having additional place or places of business within the jurisdiction of the same Sales Tax Officer or of Sales Tax Officers shall not be entitled to obtain the permission to furnish consolidated declaration or return and he shall be liable to furnish a separate declaration or return for each place to the concerned Sales Tax Officer and to maintain specified and separate details about the purchases production and sales affected at the respective

places of business.”

13. In our considered opinion, condition no.7 has nothing to do with the exemption. It simply provides that if the specified manufacturer has more than one unit within the jurisdiction of some Sales Tax Officer or officers, then, he shall not be allowed to file consolidated return. Condition no. 7 has nothing to do with grant of exemption, but it refers to filing of separate and independent returns and not consolidated return. To our mind, the clause has been inserted to avoid further complications in the matter, because, in the consolidated return, sometimes, it may become difficult to ascertain whether particular goods purchased under exemption have been used by the unit entitled to exemption or by another unit which was not enjoying exemption facility. Whether purchase or sales is exempt from the Sales Tax or purchase tax, has nothing to do with filing of independent separate or consolidated return.

14. Condition no.4 of entry no. 118(2) to which we have referred above says that no tax would be payable if the specified manufacturer furnishes to the selling dealer a

certificate in Form I appended hereto declaring inter alia that the goods are required for use by him within the State of Gujarat as raw materials, processing materials or consumable stores in the manufacture of goods for sale which shall not take place outside the State of Gujarat. It would be necessary to note that condition no.4 does not say that the goods described as raw materials, processing material or consumable stores are required to be used for manufacture of further goods within the factory premises of the exemptee. Requirement of the law is to submit a declaration that the goods are required by him as raw material or as processing material or consumable stores in the manufacture of goods. The words " goods are required for use by him" are though read in conjunction with the words " in the manufacture of goods", but it would not be possible for any authority or Court to read further that the goods are to be manufactured within particular premises or the factory of such exemptee. The requirement of law is that the goods must be used as raw material, processing material or consumable stores in the manufacture of goods and such product is not sold outside the State of Gujarat. In the present mater, undisputedly, purchased goods are being used for manufacture of goods. Dispute only is whether the goods are to be used in the factory premises owned by

the exemptee or the law must take its own course by giving simple meaning to simple words meaning thereby that the assessee can send the raw material to any other factory for making grey, bring it back for making finished goods for sale within th State of Gujarat.

15. In the matter of **Assessing Authority-cum-Excise and Taxation Officer, Gurgaon and another Vs. East India Cotton Mfg., Co. Ltd., reported in 1981 (48) STC 239,** the Supreme Court has observed that if the goods are used by the assessee himself, then, he would be entitled to exemption, but if he uses the goods on job work for work of another person, then, it would tantamount to breach of the condition. The Supreme Court observed that the Statute must be construed according to its plain language and neither should anything be added nor should anything be subtracted unless there are adequate grounds to justify the inference that the legislature clearly so intended. In the said matter, the Supreme Court observed that Section 8(3)(b) of the Central Sales Tax Act would clearly cover a case where a registered dealer manufactured or processed goods for a third party on job -contract and used in the manufacture or processing of such goods, materials purchased by him against his certificate of registration and the declarations in Form-

C, so long as manufactured or processed goods were intended for sale by such third party. The Supreme Court further observed that if particular words are used in the provision of the Statute, then, such words should, in fact, qualify other words. In the present matter, undisputedly, the goods purchased by the assessee have been used as raw materials/processing material or consumable stores in the manufacture of goods for sale within the State of Gujarat. In view of the judgment of the Supreme Court, no words are to be added nor words are to be subtracted. If exemption clause says that the goods purchased are to be used as raw material, processing material or consumable stores in the manufacture of goods, then, no court or authority or officer would be entitled to read that such goods should be used as raw materials, processing materials or consumable stores in manufacture of goods within the factory premises of the exemptee.

15 A. We have referred the judgment of the Apex Court in the case of Assessing Authority-cum-Excise and Taxation Officer Vs. East India Cotton Manufacturing Co. Ltd.,reported in 1981 48 STC 239. The said decision has been followed by the Division Bench of this Court in the case of Bhavnagar Chemical Works Ltd. Vs. Commissioner of

Sales Tax, Ahmedabad reported in (1992) 84 STC 432, at Page 435 the Division Bench has observed as under,

15 A:1. “In East India Cotton Mfg. Co.'s case [1981] 48 STC 239, the Supreme Court has held that Section 8(3)(b) of the Central Sales Tax Act would clearly cover a case where a registered dealer manufactured or processed goods for a third party on a job-contract and used in the manufacture or processing of such goods, materials purchased by him against his certificate of registration and the declarations in form “C”, so long as the manufactured or processed goods were intended for sale by such third party. The expression used by the Legislature as well as the rule-making authority was simply “for use... in the manufacture...of goods for sale” without any addition of words indicating that the sale must be by any particular individual. The Supreme Court, after referring to the decision of this Court in Navsari Cotton Silk Mills Co.'s case [1976] 37 STC 140, observed that it should be deemed to have been overruled by that decision. In view of the direct decision of the Supreme Court on the point, it will have to be held that the assessee in this case had not committed any breach of the declarations made in form “C” by using the goods purchased against those forms in

processing the goods of other parties, which were meant for sale by those parties."

15 B. From the record it appears that the tribunal made a reference to this Court being Reference Application No.7 of 1989 and the statement of the case which has been drawn by the tribunal. The tribunal has stated that though they are following the Supreme Court judgment in the case of Assessing Authority-cum-Excise and Taxation Officer Vs. East India Cotton Manufacturing Co. Ltd.(Supra), the aforesaid judgment will have to be considered and observed in the light of the judgment passed by the Gujarat High Court in the case of Vallabh Glass Works Vs. State of Gujarat reported in 1993 88 STC 74. The Reference Application No.7 of 1989 decided on 16th April, 1991 which is since reported in 88 STC 1993 at Page 74.

15 C. The Division Bench of this Court in the case of Vallabh Glass Works Vs. State of Gujarat reported in 1993 (88) STC 74, has referred Para 17 at Page 83 of the said judgment, which is as under,

15 C:1. "Turning now to the second question, we shall have to find out from the facts aforesaid as to

whether the assessee has committed breach of recitals of declaration in form “Z” when the sand manufactured at Pali at Vallabh Vidyanagar. The raw material, namely, beaters, is used by the assessee as machinery within the State. The requirement further is that the beaters must have been used by the assessee in the manufacture of any goods for sale. The final product which was manufactured by the assessee was sand. The part of the said product was, thereafter, as per the finding given by the tribunal was transported to parent company at Vallabh Vidyanagar for the purpose of manufacturing glass. It is, therefore, clear that the product that was manufactured namely, sand, was not used by the assessee for sale, but in fact, the assessee has transported the same to its parent company for the purpose of manufacturing another product, namely, glass. The assessee, in fact, did not sell the article manufactured by it. It may be mentioned at this stage that the assessee is a certified manufacturer and it has purchased beaters against from “Z” from the registered dealer. Admittedly, the parent unit of the company at Vallabh Vidyanagar is not the certified manufacturer. The benefit of exemption is to be available to the certified manufacturer. Certified manufacturer required the beaters for the purpose of manufacturing its final product, namely, sand. Such

product was required to be sold by the certified manufacturer as per the recitals contained in form “Z”. Admittedly, the assessee did not wholly sell the goods manufactured by it and as per the findings of the tribunal part of the goods manufactured by it were transported to the parent company for the purpose of manufacturing glass. To that extent, the assessee committed breach of liability to pay purchase tax under Section 50 of the said Act. We, therefore, find that tribunal was right in holding that there was breach of recitals of declaration in form “Z” when the sand manufactured by Pali factory was used as further raw material in the manufacturing of glass for sale at Vallabh Vidyanagar.”

15 D. In view of the above, on the facts and circumstances of that case, the Division Bench of this Court has held that the petitioner being a certified manufacturer did not fulfill the condition of Form-'Z' in that behalf. But, herein the facts of this case are quite different, and therefore, the said decision in Vallabh Glass Works' case will not be applicable here.

15 E. However, there is a judgment of Madras High Court in the case of Prasad Products Vs. State of Tamil

Nadu reported in (1998) 111 STC 51. In the said decision in Para 15 at Page 55, the Madras High Court has held as under,

15 E:1. “In the instant case, the assessee-dealers used the goods and materials purchased, as covered by the certificate of registration, for processing motion films of third parties on job-work basis. Whether the user of the goods and materials so purchased would tantamount to infraction or violation of any of the relevant clause of Section 10, for the imposition of penalty, in lieu of prosecution under Section 10 (A) of the CST Act is, in fact, a question implicitly necessary to be decided. The taxing authorities, namely, the assessing authority and the lower appellate authority found, as a matter of fact, that the assessee-dealers used the goods and materials so purchased in the process of motion films of third parties, on job-work basis. When the goods and materials so purchased had been used by the assessee-dealers, as had been found by the taxing authorites, puzzling it is for us, to understand as to how the order of assessment, as has been made by the Tribunal, is sustainable, on the facts and in the circumstances of the case, when specially, on the face of the decision rendered by the Apex Court of this country in the case of East India

Cotton Mfg. Co. Ltd. [1981] 48 STC 239.”

15 F. In view of the judgment of the Apex Court in the case of East India Cotton Mfg. Co. Ltd. (Supra)and in view of the Division Bench judgment in the case of Bhavnagar Chemical Works Ltd. Vs. Commissioner of Sales Tax, and also in view of the judgment of the Madras High Court in the case of Prasad Products Vs. State of Tamil Nadu; we are of the view that the Gujarat Sales Tax Tribunal was justified in holding that there is no breach of recitals of declarations in Form-I on the part of the opponent and so no purchase tax was payable under Section 50 of the Gujarat Sales Tax Act, 1969 by the opponent in respect of the purchase of the yarn effected by him against From-I, vide Bill No. A/Derby/2 dated 7.02.1984.

16. In the matter of **Bulbu Prasad Amarnath Vs. Commissioner of Sales Tax, U.P., reported in 1964 (15) STC 46,** Division Bench of Allahabad High Court had taken almost identical issue for consideration. There, the question was that if a dealer in linseed oil was getting linseed crushed in factory belonging to another man on the basis of job work, whether he would continue to be a manufacturer specially when he himself was not producing oil in the technical terms. Allahabad High

Court observed that in order to become a manufacturer of linseed oil, it would not be essential that he should himself produce oil from-seeds with his own machinery in his own premises. If he gets oil-seeds crushed into oil through a servant or agent, the law regards him as having done the crushing himself and he will be a manufacturer of linseed oil.

17. Applying ratio of the said judgment, we must also hold that the assessee, if was getting work partly done on job work basis, then too, he was not violating exemption/condition, because, even by getting job work, he was still using the goods as raw material/processing material or consumable stores in the manufacture of goods for sale. We would repeat again that if the words used in the Act are clear and simple, then, those are to be understood as those are. A simple word used by the legislature is not to be interpreted as a technical term.

18. The Form-I also does not say that the goods are to be used in the factory premises of the concerned exemptee. Language in the form is that the goods being raw materials, processing materials or consumable stores, will be used by the declarant within the State of Gujarat in the manufacture of goods for sale which shall not take

place outside the State of Gujarat. If the declaration does not say that the exempted goods are to be used in the factory premises of the exemptee, but simply requires him to declare that such goods are to be used in manufacture of some other goods for sale within the State of Gujarat, then, by no stretch of imagination, it can be said that the Section 50 would be applicable.

19. It would also be necessary to note that the property in the goods never passed from exemptee to any third party. He continued to be owner of goods and was using the goods in manufacturing.

20. In view of the above discussion, we must answer the question in affirmative and must hold that on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that there was no breach of recitals of the declaration in Form -I on the part of the assessee and so no purchase tax was payable under Section 50 of the Gujarat Sales Tax Act, 1969 by the opponent in respect of the purchase of yarn effected by him against Form-I vide Bill No. A/Derby/2, dated 7.2.1984. We therefore answer the Reference in favour of Assessee and against the revenue.

[R.S. GARG, J.]

[K.M. MEHTA, J.]

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